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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. DARRYL O'SHEA STRICKLAND, Defendant and Appellant.	B205303 (Los Angeles County Super. Ct. No. BA325411)

APPEAL from a judgment of the Superior Court of Los Angeles County. Stephen A. Marcus, Judge. Affirmed.

Benjamin Owens, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Steven D. Matthews and Blythe J. Leszkay, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant was convicted, following a jury trial, of one count of possession for sale of cocaine base in violation of Health and Safety Code section 11351.5. The jury found true the allegations that appellant had suffered three prior convictions within the meaning of Health and Safety Code section 11370.2, subdivision (a). Appellant admitted that he had served a prior prison term within the meaning of Penal Code section 667.5, subdivision (b). The trial court sentenced appellant to a total term of nine years in state prison. Based upon this conviction, the court found appellant to be in violation of his probation in case number BA307512 and sentenced him to three years in state prison, to be served concurrently with the sentence in the new case.

Appellant appeals from the judgment of conviction, contending that the trial court erred in denying his motion to suppress evidence. In a supplemental brief, he contends that if his conviction is reversed due to the trial court's error in denying the motion to suppress, the court's finding of a probation violation should also be reversed. We see no error, and affirm the judgment of conviction and the probation violation finding.

Facts

Before trial, appellant moved to suppress evidence discovered in a search of his apartment following his detention by Los Angeles Police Officers outside that residence. At the hearing on appellant's motion, Los Angeles Police Officer Craig Piantanida testified that in July 2007 he and his partner Officer Mkrtchyan were monitoring a bungalow at 2939 Brighton. That bungalow was one of three buildings on the lot, and was located at the rear of the lot. The area was a "relatively high" narcotics area and police had received "numerous" complaints of narcotics sales at that address. Officer Piantanida had personally received three to five such complaints over the telephone in the months of May and June. The most recent call that Officer Piantanida handled came in the latter part of June. The complaints came from citizens living around the area. Officers Piantanida and Mkrtchyan were members of the Southwest Narcotic Enforcement Detail. Officer Piantanida had been at the Narcotics Division for three

years, attended a 40-hour narcotics investigators course, and been involved in about 1,000 narcotics arrests.

On July 8, about 11:45 p.m., Officers Piantanida and Mkrtchyan drove through the alley next to 2939 Brighton. They saw appellant walking toward the bungalow's door. The officers got out of their vehicle and stood in the common area of the buildings on the lot. They saw a light go on inside the bungalow. They then saw appellant leave the bungalow and lock the door. Officer Piantanida testified that his partner said he saw a clear plastic baggie in appellant's right hand. The officers formed the belief that appellant was removing narcotics from the bungalow. They decided to detain him.

The plastic baggie in appellant's hand contained a green leafy substance resembling marijuana. A search of appellant uncovered an off-white solid resembling cocaine in his pocket. Police learned that appellant was on parole and searched his apartment. There, the officers found about 65 grams of off-white solids resembling rock cocaine, more marijuana, sandwich baggies and a scale.

The trial court denied appellant's motion to suppress. The court did not make any express findings of fact in connection with its ruling.

At trial, Officer Piantanida's testimony was virtually identical to the testimony he gave at the hearing on the motion to suppress. In addition, Officer Piantanida opined that the cocaine in the bungalow was possessed for purposes of sale. Officer Mkrtchyan, who did not testify at the hearing, did testify at trial. His testimony corroborated Officer Piantanida's account of events. The People also introduced testimony that the substances which resembled marijuana and cocaine were in fact marijuana and cocaine.

Appellant did not testify at the hearing on his motion, but did testify on his own behalf at trial. He stated that he did not live at 2939 Brighton Avenue, but had merely had mail sent there while he was in prison. On July 8, 2007, he went to the bungalow to pick up his mail. He was carrying his medication in a white plastic bag. He knocked on the door of the bungalow. While he was knocking, someone grabbed his bag. Appellant struggled and his attacker was joined by another man. The men turned out to be police officers. They handcuffed him. One of the men used a battering ram to open the door of

the bungalow. They put appellant's medication into a backpack which did not belong to him.

Discussion

1. Motion to suppress

Appellant contends that the officers lacked probable cause to detain him, the evidence found after the detention was the fruit of that unlawful detention, and the trial court erred in denying his motion to suppress that evidence. We see no error.

The standard of review of a trial court's ruling on a motion to suppress is well established. We defer to the trial court's factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment. (*People* v. *Glaser* (1995) 11 Cal.4th 354, 362.)

The Fourth Amendment to the United States Constitution guarantees freedom from unreasonable search and seizure. (U.S. Const., 4th Amend.; U.S. Const., 14th Amend.) Where evidence is obtained in violation of this right, the remedy is suppression of that evidence. (*Mapp* v. *Ohio* (1961) 367 U.S. 643, 654.) Evidence that is the product of an unlawful search or seizure is also subject to exclusion under the "fruit of the poisonous tree" doctrine. (*Wong Sun* v. *U.S.* (1963) 371 U.S. 471, 484-485.)

The Fourth Amendment's prohibition on unreasonable search and seizure extends to brief investigatory detentions falling short of traditional arrest. (*U.S.* v. *Arvizu* (2002) 534 U.S. 266, 273; *Terry* v. *Ohio* (1968) 392 U.S. 1.)

"[T]he temporary detention of a person for the purpose of investigating possible criminal activity may, because it is less intrusive than an arrest, be based on 'some objective manifestation' that criminal activity is afoot and that the person to be stopped is engaged in that activity. [Citations.]" (*People* v. *Souza* (1994) 9 Cal.4th 224, 230.)

A reviewing court should "look at the 'totality of the circumstances' of each case to see whether the detaining officer has a 'particularized and objective basis' for suspecting legal wrongdoing." (*U.S.* v. *Arvizu*, *supra*, 534 U.S. at p. 273.) A police officer is

entitled to make an assessment of the situation in light of his specialized training. (*Ornelas* v. *U.S.* (1996) 517 U.S. 690, 699.) "The possibility of an innocent explanation does not deprive the officer of the capacity to entertain a reasonable suspicion of criminal conduct." (*In re Tony C.* (1978) 21 Cal.3d 888, 894.)

On this appeal, both parties' arguments focus on the telephone complaints of narcotics activity, the character of the neighborhood and the bare fact that appellant was carrying a plastic bag. In doing so, they overlook the obvious: the bag was clear plastic, protruded from appellant's hand and contained a green substance which resembled marijuana. This fact alone gives rise to a reasonable suspicion of criminal activity.

We recognize that, Officer Mkrtchyan, the officer who initially saw the clear plastic baggie in appellant's hand, did not testify at the suppression hearing. Officer Piantanida did not initially see the baggie, but learned of it when Officer Mkrtchyan stated that appellant had a bag in his hand. At that point, Officer Piantanida testified that both officers formed the opinion that appellant was removing narcotics from the area and decided to detain him.

Appellant was about three feet away from the officers when he came out the door of the bungalow. The baggie in his hand was made of *clear* plastic and contained a leafy green substance which resembled marijuana. Both officers were narcotics specialists, and were observing the area because they suspected narcotics activity. It is reasonable to infer that when Officer Mkrtchyan pointed out that appellant had a baggie, the officer meant that appellant had a baggie which contained a substance which Officer Mkrtchyan believed was a narcotic, and that that is how Officer Piantanida understood the remark. This is sufficient to justify a brief detention.

Further, even assuming for the sake of argument that Officer Mkrtchyan could not tell what was in the bag when appellant first came out of the bungalow, appellant was in a public place and the officers could walk closer to him without implicating the Fourth Amendment in any way. Once the officers were closer to appellant, they could not have failed to see the contents of the clear plastic bag in appellant's hand.

Appellant's reliance on *Remers* v. *Superior Court* (1970) 2 Cal.3d 659 and *People* v. *Huntsman* (1984) 152 Cal.App.3d 1073 is misplaced. *Remers* involves a suspect who displayed a tinfoil packet and *Huntsman* involves a suspect who hid a baggie in the trunk of his car before police officers could observe the bag's contents. Thus, in both cases, police detained the suspect without being able to see the contents of the container at issue, and could not have learned the contents of the container without a search of the suspect's person or car. No search was necessary for the officers in this case to discern that appellant was carrying marijuana.

2. Probation violation

In a supplemental brief, appellant contends that if we find the detention improper and reverse this conviction in this case, we should also reverse the trial court's finding of a probation violation in case number BA307512 because that finding was based on appellant's conviction in this case. Since we have found no error in the trial court's denial of appellant's motion to suppress, the court's finding of a violation in case number BA307512 is proper and still stands.

Disposition

The judgment is affirmed.

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ARMSTRONG, J.

We concur:

TURNER, P. J. KRIEGLER, J.